REMARKS

Claims 1-69 have been subjected to restriction for prosecution on the merits under 35 U.S.C. §§121. Claims 1-41 are pending, claims 64-69 have been withdrawn and claims 42-63 have been cancelled. Applicants reserve the right to pursue the subject matter of the withdrawn or cancelled claims in a subsequent patent application.

The Restriction Requirement contends that the application contains claims directed to three patentably distinct inventions as follows:

I. Claims 1-41, drawn to a method of treating a patient with an acute myocardial infarction, classified in class 514, subclass 964;

II. Claims 42-63, drawn to a pharmaceutical composition, classified in class 424, subclass 450;

III. Claims 64-69, drawn to a method for reducing the zone of infarct following acute myocardial infarction comprising administering a bisphosphonate, classified in class 514, subclass 102.

Applicants respectfully disagress with this restriction. However, in order to be responsive to the pending Action, applicants provisionally elect to prosecute the method claims of **Group I (claims 1-41)**.

In addition, the Examiner has required an election of "a single disclosed species of each of A, B and C for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable." The groups are as follows:

A. Encapsulated agents, embedded agents and particulate agents.

B. The agent, selected from intracellular inhibitor, intracellular deactivator, intracellular arrestor, intracellular toxin, cytostaic substance, cytotoxic substance.

C. Wherein the agent is gallium or a bisphosphonate.

Applicants disagree with the species election and maintain that all of the subgroups are capable of simultaneous examination without additional or undue burden on the Examiner. However, in order to be responsive, applicants hereby elect **Encapsulated Agents** from Group A, **an Intracellular Inhibitor** from Group B and **a Bisphosphonate** from Group C.

Applicants respectfully remind the Examiner that the election of species for prosecution on the merits only applies if no generic claim is finally held to be allowable. In other words, upon examination and allowance of the elected species, applicants are entitled to consideration of claims to additional species which include all the limitations of the generic claims as provided by 37 C.F.R. §1.141.

Applicants respectfully disagree with the restriction requirement imposed by the Examiner and the characterizations made of the claimed invention. Accordingly, as is set forth in detail below, this election is made with traverse.

Applicants respectfully request that Groups I and III be examined together. Group I is directed to a method of treating acute myocardial infarction. Group III is directed to a method of reducing the zone of infarct using bisphosphonate. Group III is a narrower invention of the Group I invention and as such is encompassed by Group I. There is no additional burden on the Examiner in searching prior art in an area encompassed by the elected group. This is further evidenced by the fact that both Group I and Group III are classified in class 514, as set forth by the Restriction

Requirement.

Further, the Restriction Requirement describes the distinction between Groups I and II in a manner that cannot be sustained: "The subcombinations are distinct ... if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as inhibition of bone resorption." This statement is simply incorrect. Group III claims are directed to methods of reducing the zone of infarct following an acute myocardial infarction comprising a bisphosphonate. Such claims do not have "separate utility" in the inhibition of bone resorption, but rather are limited to the specific method use recited. The use specified for Group III claims falls within the use recited in Group I claims; that is, "reducing the zone of infarct following acute myocardial infarction" is not "separately usable" from the "treatment of acute myocardial infarction".

Thus, in view of M.P.E.P. § 803, the subject matter of the claims in Groups I and III should be searched and examined in the subject application. Accordingly, applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be modified and Group I and Group III are rejoined for examination in this application.

CONCLUSION

Applicants earnestly solicit reconsideration of the pending restriction requirement. Early and favorable action by the Examiner is earnestly requested.

AUTHORIZATION

No additional fee is believed due other than the extension of time submitted herewith. However, the Commissioner is hereby authorized to charge any

additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4313-4005.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: July 26, 2006

Dorothy R. Auth
Registration No. 36,434

Correspondence Address:
Morgan & Finnegan, L.L.P.
3 World Financial Center
New York, New York 10281-2101
(212) 415-8700 Telephone
(212) 415-8701 Facsimile

27123
↑CUSTOMER NUMBER↑